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COUNSEL TO BAKER ACTS TO QUIT SUIT

Fortas, Now Aiding Johnson,
Sees Conflict in 2 Roles

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Special to The New York Times

WASHINGTON, Dec. 2 —

Abel Fortas, the Washington lawyer who has been representing Robert G. Baker, is withdrawing as counsel because of the advisory role he is playing in the Johnson Administration.

Mr. Fortas is an old friend of President Johnson's. Since Mr. Johnson assumed the Presidency ten days ago, Mr. Fortas has been in and out of the White House, giving advice on legal and other matters.

Mr. Baker, a Johnson protegee,

resigned from his position as secretary to the Senate majority on Oct. 7, with various charges of improper practice pending against him. The Senate Rules Committee has since started a formal inquiry into his activities.

The only pending litigation involving Mr. Baker is a civil suit filed against him and others by the Capitol Vending Company. It seeks \$300,000 damages for the defendants' asserted failure to obtain a contract for the company as promised.

It was in this proceeding that Mr. Fortas's decision to drop out as Mr. Baker's counsel became known. A formal motion was filed in District Court here today for withdrawal by Mr. Fortas and his firm, Arnold, Fortas and Porter.

The motion will be heard tomorrow morning by Judge Alexander Holtzoff. Ordinarily, permission to withdraw in

such a case is routinely granted.

Mr. Fortas issued a statement this evening explaining that his talks with Government officials as an adviser to the President were embarrassing his position as "counsel" to Mr. Baker. The statement said:

"In the crisis of transition, I have undertaken certain assignments which involved conference with officials of the Government who may be concerned with the Baker case. In these circumstances I would not effectively represent Mr. Baker without embarrassment.

"So, with Mr. Baker's understanding consent, I have reluctantly had to take steps to withdraw from his representation. I emphasize that this has nothing to do with the merits of the case and is due solely to my unwillingness to allow my emergency service adversely to affect Mr. Baker."

The action raised speculation

that Mr. Fortas might be due for a formal appointment by President Johnson instead of his unofficial advisory role. As to that, he said today:

"I hope not, and don't intend to."

Mr. Fortas was Under Secretary of the Interior in New Deal days, under Secretary Harold L. Ickes. He has been not only a friend but also a lawyer to Mr. Johnson in the past. He is widely regarded as one of the ablest and most successful of Washington lawyers.